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and OFFICER R.S.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PEDRO PONCE,

Plaintiff,

vs.

CITY OF FONTANA; OFFICER D.C.;
OFFICER T.D.; OFFICER R.S.; and
DOES 4 through 10,

Defendants.

) CASE NO: 5:15-CV-00074-VAP (SPx)

)

) ASSIGNED FOR ALL PURPOSES TO:

) Honorable District Judge Virginia A. Phillips

) Magistrate Judge Sheri Pym

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)

STIPULATED PROTECTIVE ORDER

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M.A.L. a minor by and through his
guardian ad litem, ERICA

COVARRUBIAS; Y.I.L., a minor by
and through her guardian ad litem,

ERICA COVARRUBIAS; J.A.L., a
minor by and through her guardian ad

litem, ERICA COVARRUBIAS;

Y.A.L., a minor by and through her

guardian ad litem, ERICA

) [*Consolidated With*]

)

) CASE NO: 5:15-CV-00940-VAP (SPx)

)

) ASSIGNED FOR ALL PURPOSES TO:

) Honorable District Judge Virginia A. Phillips

) Magistrate Judge Sheri Pym

)

)

COVARRUBIAS; Y.A.C., a minor by)
 and through her guardian ad litem,)
 ERICA COVARRUBIAS; ODALIZ)
 URIARTE, an individual,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF FONTANA, a governmental)
 entity; OFFICER D.C., an individual;)
 OFFICER T.D., an individual;)
 OFFICER R.S., an individual; and)
 DOES 4 through 10, Inclusive; and,)
 JESUS ALFONSO LOPEZ, an)
 individual and a nominal defendant,)
)
 Defendants.)
)

1. A. PURPOSES AND LIMITATIONS

Defendants contend that discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the

1 applicable legal principles. The parties further acknowledge, as set forth in Section
2 12.3, below, that this Stipulated Protective Order does not entitle them to file
3 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
4 that must be followed and the standards that will be applied when a party seeks
5 permission from the court to file material under seal.
6

7 8 B. GOOD CAUSE STATEMENT

9 This action involves an ongoing narcotics investigation by the Fontana Police
10 Department, Narcotics Unit and the DEA. Defendants' assert that the underlying
11 incident involves suspected drug tracking involving Mexican drug cartels and the
12 distribution and sale of over 30 kilos of cocaine. The anticipated documents involved
13 in the case include the Los Angeles Police Department investigation of the "Officer
14 Involved Shooting" ("OIS"), coroner's lab results and photographs, photos of the scene
15 procured by law enforcement agencies, names of narcotics officers, (some whom are
16 currently working on the open investigation), addresses of witness to the events.
17 Further, Defendants anticipate that plaintiffs will seek confidential documents in this
18 matter which include, but are not limited to, personnel records of officers, other
19 employment and training records, information from Fontana Police Department
20 regarding prior incidents and investigations into those incidents, or other confidential
21 information (including potential information implicating privacy of third parties),
22 information not generally available to the public, or which may be privileged or
23 otherwise protected from disclosure under state or federal statutes, court rules, case
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1 decisions, or common law.

2 Should this information (photos of the investigation, personnel records of those
3 officers involved, addresses of witnesses, etc.) be disclosed without the protection of
4 the proposed protective order, and open access to the information be allowed, the lives
5 of those involved would be placed at risk. The integrity of the ongoing investigation
6 itself would also be placed at risk. As stated above, the narcotics investigation is
7 ongoing and good cause exists to prevent the public from accessing this information in
8 order to secure the safety of those involved and the investigation.
9

10 Accordingly, to expedite the flow of the information, to facilitate the prompt
11 resolution of disputes over confidentiality of discovery materials, to adequately protect
12 information the parties are entitled to keep confidential, to ensure that the parties are
13 permitted reasonable necessary uses of such material in preparation for trial and to
14 address their handling at the end of the litigation, and serve the ends of justice, a
15 protective order for such information is justified in this matter. It is the intent of the
16 parties that information will not be designated as confidential for tactical reasons and
17 that nothing be so designated without a good faith belief that it has been maintained in
18 a confidential, non-public manner, and there is good cause why it should not be part of
19 the public record in this case.
20

21 2. DEFINITIONS

22 2.1 Action: This pending federal lawsuit, entitled *Pedro Ponce v. City of*
23 *Fontana, et al.* case no. 5:15-CV-00074-VAP (SPx), consolidated with *M.A.L. et al. v.*
24

1 *City of Fontana, et al.* case no.:5:15-CV-00940-VAP (SPx).

2 2.2 Challenging Party: a Party or Non-Party that challenges the designation
3 of information or items under this Order.
4

5 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
6 how it generated, stored or maintained) or tangible things that qualify for protection
7 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
8 Statement.
9

10 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
11 support staff).
12

13 2.5 Designating Party: a Party or Non-Party that designates information or
14 items that it produces in disclosures or in responses to discovery as
15 “CONFIDENTIAL.”
16

17 2.6 Disclosure or Discovery Material: all items or information, regardless of
18 the medium or manner in which it is generated, stored, or maintained (including,
19 among other things, testimony, transcripts, and tangible things), that are produced or
20 generated in disclosures or responses to discovery in this matter.
21

22 2.7 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
24 expert witness or as a consultant in this Action.
25

26 2.8 House Counsel: attorneys who are employees of a party to this Action.
27 House Counsel does not include Outside Counsel of Records or any other outside
28

1 counsel.

2 2.9 Non-Party: any natural person, partnership, corporation, association, or
3 other legal entity not named as a Party to this action.
4

5 2.10 Outside Counsel of Record: attorneys who are not employees of a party
6 to this Action but are retained to represent or advise a party to this Action and have
7 appeared in this Action on behalf of that party or are affiliated with a law firm which
8 has appeared on behalf of that party, and include support staff.
9

10 2.11 Party: any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).
13

14 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
15 Discovery Material in this Action.
16

17 2.13 Professional Vendors: persons or entities that produce litigation support
18 services (e.g., photocopying, videotaping, translating, preparing exhibits or
19 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
20 their employees and subcontractors.
21

22 2.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as "CONFIDENTIAL."
24

25 2.15 Receiving Party: A Party that receives Disclosure or Discovery Material
26 from a Producing Party.
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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected
3 Material (as defined above), but also (1) any information copied or extracted from
4 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
5 Material; and (3) any testimony, conversations, or presentations by Parties or their
6 Counsel that might reveal Protected Material.
7

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9 Any use of Protected Material at trial shall be governed by the orders of the trial
10 judge. This Stipulation and the Order does not govern the use of Protected Material at
11 trial.
12

13 4. DURATION

14 Once a case proceeds to trial, all of the information that was designated as
15 confidential or maintained pursuant to this protective order becomes public and will be
16 presumptively available to all members of the public, including the press, unless
17 compelling reasons supported by specific factual findings to proceed otherwise are
18 made to the trial judge in advance of the trial. *See* Kamakana v. City and County of
19 Honolulu, 447 F. 3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”
20 showing for sealing documents produced in discovery from “compelling reasons”
21 standard when merits-related documents are part of the court record). Accordingly, the
22 terms of this protective order do not extend beyond the commencement of the trial.
23
24

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.
27
28

1 Each Party or Non-Party that designates information or items for protection under this
2 Order must take care to limit any such designation to specific material that qualified
3 under the appropriate standards. The Designating Party must designate for protection
4 only those parts of material, documents, items, or oral or written communications that
5 qualify so that other portions of the material, documents, items, or communications for
6 which protection is not warranted are not swept unjustifiably within the ambit of this
7 Order.
8

9
10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper purpose
12 (e.g., to unnecessarily encumber the case development process or to impose
13 unnecessary expenses and burdens on other parties) may expose the Designating Party
14 to sanctions.
15
16

17 If it comes to a Designating Party's attention that information or items that it
18 designated for protection do not qualify for protection that Designating Party must
19 promptly notify all other Parties that it is withdrawing the inapplicable designation.
20

21 5.2 Manner and Timing of Designations. Except as otherwise provided in
22 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
23 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
24 under this Order must be clearly so designated before the material is disclosed or
25 produced.
26

27 Designation in conformity with this Order requires:
28

1 (a) for information in documentary form (e.g., paper or electronic
2 documents, but excluding transcripts of depositions or other pretrial or trial
3 proceedings), that the Producing Party affix at a minimum, the legend
4 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
5 contains protected material. If only a portion or portions of the material on a page
6 qualified for protection, the Producing Party also must clearly identify the protected
7 portion(s) (e.g., by making appropriate markings in the margins).
8
9

10 A Party or Non-Party that makes original documents available for inspection
11 need not designate them for protection until after the inspecting Party has indicated
12 which documents it would like copied and produced. During the inspection and before
13 the designation, all of the material made available for inspection shall be deemed
14 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
15 copied and produced, the Producing Party must determine which documents, or
16 portions thereof, qualify for protection under this Order. Then, before producing the
17 specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to
18 each page that contains Protected Material. If only a portion or portions of the material
19 on a page qualifies for protection, the Producing Party must clearly identify the
20 protected portion(s) (e.g., by making appropriate markings in the margins).
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23
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25 (b) for testimony given in depositions that the Designating Party identify the
26 Disclosure or Discovery Material on the records, before the close of the deposition all
27 protect testimony.
28

1 (c) for information produced in some form other than documentary and for
2 any other tangible items, that the Producing Party affix in a prominent place on the
3 exterior of the container or containers in which the information is stored the legend
4 “CONFIDENTIAL.” If only a portion or portions of the information warrants
5 protection, the Producing Party, to the extent practicable, shall identify the protected
6 portion(s).
7

8
9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
10 failure to designate qualified information or items does not, standing
11 alone, waive the Designating Party’s right to secure protection under the
12 Order for such material. Upon timely correction of a designation,
13 Receiving Party must make reasonable efforts to assure that the material is
14 treated in accordance with the provisions of this Order.
15
16

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
19 designation of confidentiality at any time that is consistent with the Court’s Scheduling
20 Order.
21

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process under Local Rule 37.1 et seq.
24

25 6.3 The burden of persuasion in any such challenge proceeding shall be on the
26 Designating Party. Frivolous challenges, and those made for an improper purpose
27 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
28

1 expose the Challenging Party to sanctions. Unless the Designating Party has waived or
2 withdrawn the confidentiality designation, all parties shall continue to afford the
3 material in question the level of protection to which it is entitled under the Producing
4 Party's designation until the Court rules on the challenge.
5

6 7. ACCESS TO AND USE OF PROTECTED MATERIAL
7

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is
9 disclosed or produced by another Party or by a Non-Party in connection with this
10 Action only for prosecuting, defending, or attempting to settle this Action. Such
11 Protected Material may be disclosed only to the categories of persons and under the
12 conditions described in this Order. When the Action has been terminated, a Receiving
13 Party must comply with the provisions of section 13 below (FINAL DISPOSTION).
14

15 Protected Material must be stored and maintained by a Receiving Party at a
16 location and in a secure manner that ensures that access is limited to the persons
17 authorized under this Order.
18

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
20 otherwise ordered by the court or permitted in writing by the Designating Party, a
21 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
22 only to:
23
24

25 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
26 employees of said Outside Counsel of Record to whom it is reasonably necessary to
27 disclose the information for this Action.
28

1 (b) the officers, directors, and employees (including House Counsel) of the
2 Receiving Party to whom disclosure is reasonably necessary for this Action;

3
4 (c) Experts (as defined in this Order) of the Receiving Party to whom
5 disclosure is reasonably necessary for this Action and who have signed the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7
8 (d) the court and its personnel;

9 (e) court reporters and their staff;

10 (f) professional jury or trial consultants, mock jurors, and Professional
11 Vendors to whom disclosure is reasonably necessary for this Action and who have
12 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13
14 (g) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information;

16
17 (h) during their depositions, witnesses, and attorneys for witnesses, in the
18 Actions to whom disclosure is reasonably necessary provided: (1) the deposing party
19 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
20 not be permitted to keep any confidential information unless they sign the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
22 by the Designating Party or ordered by the court. Pages of transcribed deposition
23 testimony or exhibits to depositions that reveal Protected Material may be separately
24 bound by the court reporter and may not be disclosed to anyone except as permitted
25 under this Stipulated Protective Order; and
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1 (i) any mediator or settlement officer, and their supporting personnel,
2 mutually agreed upon by any of the parties engaged in settlement discussions.

3
4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
5 OTHER LITIGATION

6 If a Party is served with a subpoena or a court order issued in other litigation that
7 compels disclosure of any information or items designated in this Action as
8 “CONFIDENTIAL,” that Party must:
9

10 (a) promptly notify in writing the Designating Party. Such notification shall
11 include a copy of the subpoena or court order;
12

13 (b) promptly notify in writing the party who caused the subpoena or order to
14 issue in the other litigation that some or all of the material covered by the subpoena or
15 order is subject to this Protective Order. Such notification shall include a copy of the
16 Stipulated Protective Order; and
17

18 (c) cooperate with respect to all reasonable procedures sought to be pursued
19 by the Designating Party whose Protected Material may be affected.
20

21 If the Designating Party timely seeks a protective order, the Party served with
22 the subpoena or court order shall not produce any information designated in this action
23 as “CONFIDENTIAL” before a determination by the court from which the subpoena
24 or order issued, unless the Party has obtained the Designating Party’s permission. The
25 Designating Party shall bear the burden and expense of seeking protection in that court
26 of its confidential material and nothing in these provisions should be construed as
27
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1 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
2 directive from another court.

3
4 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
5 PRODUCED IN THIS LITIGATION

6 (a) The terms of the Order are applicable to information produced by a
7 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
8 produced by Non-Parties in connection with this litigation is protected by the remedies
9 and relief provided by this Order. Nothing in these provisions should be construed as
10 prohibiting a Non-Party from seeking additional protections.
11

12
13 (b) In the event that a Party is required, by a valid discovery request, to
14 produce a Non-Party's confidential information in its possession, and the Party is
15 subject to an agreement with the Non-Party not to produce the Non-Party's
16 confidential information, then the Party shall:
17

18 (1) promptly notify in writing the Requesting Party and the Non-Party that
19 some or all of the information requested is subject to a confidentiality agreement with a
20 Non-Party.
21

22 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
23 Order in this Action, the relevant discovery request(s), and a reasonably specific
24 description of the information requested; and
25

26 (3) make the information requested available for inspection by the Non-Party,
27 if requested.
28

1 (c) If the Non-Party fails to seek a protective order from this court within 14
2 days of receiving the notice and accompanying information, the Receiving Party may
3 produce the Non-Party's confidential information responsive to the discovery request.
4 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
5 any information in its possession or control that is subject to the confidentiality
6 agreement with the Non-Party before determination by the court. Absent a court order
7 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
8 in this court of its Protected Material.
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12 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

13 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
14 Protected Material to any person or in any circumstances not authorized under this
15 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
16 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
17 all unauthorized copies of the Protected Material, (c) inform the person or persons to
18 whom unauthorized disclosures were made of all the terms of this Order, and (d)
19 request such person or persons to execute the "Acknowledgment and Agreement to Be
20 Bound" that is attached hereto as Exhibit A.
21

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24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
25 PROTECTED MATERIAL

26 When Producing Party gives notice to Receiving Parties that certain
27 inadvertently produced material is subject to a claim of privilege or other protections,
28

1 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
2 Procedure 26(b)(5)(b). This provision is not intended to modify whatever procedure
3 may be established in an e-discovery order that provides for production without prior
4 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
5 parties reach an agreement on the effect of disclosure of a communication or
6 information covered by the attorney-client privilege or work product protection, the
7 parties may incorporate their agreement in the stipulated protective order submitted by
8 the court.
9

10 12. MISCELLANEOUS

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13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
14 person to seek its modification by the Court in the future.

15
16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in this
19 Stipulated Protective Order. Similarly, no Party waives any right to object on any
20 ground to use in evidence of any of the material covered by this Protective Order.
21

22 12.3 Filing Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
24 only be filed under seal pursuant to a court order authorizing the sealing of the specific
25 Protected Material at issue. If a Party's request to file Protected Material under seal is
26 denied by the court, then the Receiving Party may file the information in the public
27
28

1 record unless otherwise instructed by the court.

2 13. FINAL DISPOSITION

3
4 After the final deposition of this Action, as defined in paragraph 4, each
5 Receiving Party must return all Protected Material to the Producing Party or destroy
6 such material within 30 days. As used in this subdivision, "all Protected Material"
7 includes all copies, abstracts, compilations, summaries, and any other format
8 reproducing or capturing any of the Protected Material. Whether the Protected
9 Material is returned or destroyed, the Receiving Party must submit a written
10 certification to the Producing Party (and, if not the same person or entity, to the
11 Designating Party) by the 30 day deadline that (1) identifies (by category, where
12 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
13 that the Receiving Party has not retained any copies, abstracts, compilations,
14 summaries or any other format reproducing or capturing any of the Protected Material.
15

16
17 Notwithstanding this provision, Counsel are entitled to retain archival copy of all
18 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
19 correspondence, deposition and trial exhibits, expert reports, attorney work product,
20 and consultant and expert work product, even if such materials contain Protected
21 Material. Any such archival copies that contain or constitute Protected Material
22 remain subject to this Protective Order as set forth in Section 4 (DURATION).
23

24 14. Any violation of this Order may be punished by any and all appropriate
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1 measures including, without limitation, contempt proceedings and/or monetary
2 sanctions.

3
4
5 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**
6

7
8 Dated: November 25, 2015

LAW OFFICES OF DALE K. GALIPO

9
10 BY _____/s/ _____
11 DALE K. GALIPO, ESQ.
12 RENEE VALENTINE, ESQ.
13 Attorneys for Plaintiff, PEDRO PONCE
14

15 Dated: November 25, 2015

MARTINIAN & ASSOCIATES, INC.

16
17 BY: _____/s/ _____
18 PAT HARRIS, ESQ.
19 TIGRAN MARTINIAN, ESQ.
20 ARASH H. ZABERTIAN, ESQ.
21 Attorney for Plaintiffs, M.A.L. individually;
22 Y.I.L. individually, J.A.L. individually, Y.A.L.,
23 individually and, Y.A.C. individually, by and
24 through their guardian ad litem, Erica
25 Covarrubias, and ODALIZ URIARTE
26
27
28

1
2 Dated: November 30, 2015

RINOS & MARTIN, LLP

3
4 BY: _____/s/_____

5 LINDA B. MARTIN, ESQ.

6 ADRIANNA C. PAIGE, ESQ.

7 Attorneys for Defendants, CITY OF
8 FONTANA, OFFICER D.C., OFFICER T.D.,
9 and OFFICER R.S.
10

11 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**
12

13 DATED: December 18, 2015

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15 

16 _____
JUDGE SHERI PYM

17 United States District/Magistrate Judge
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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of,
_____ declare under penalty of perjury that I have read in its
entirety and understand the Stipulated Protective Order that was issued by the United States District
Court for the Central District of California on
_____ in the case of *Pedro Ponce v. City of Fontana*, CASE NO: 5:15-CV-
00074-VAP (SPx) [*Consolidated With*] *M.A.L., et al. v. City of Fontana, et al.* CASE NO: 5:15-CV-
00940-VAP (SPx). I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated Protective Order to any person
or entity except in strict compliance with the provisions of this Order. I further agree to submit to
the jurisdiction of the United States District Court for the Central District of California for the
purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement
proceedings occur after termination of this action. I hereby appoint
_____, of _____
_____ as my California agent for process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective Order.

DATE: _____

City of State where sworn and signed: _____

Printed name: _____

Signature: _____